

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VITTORIO GUERRIERO, M.D., and)	
GREGORY C. NACOPOULOS, D.O.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 08 C 2388
)	
MERIT LINCOLN PARK, LLC, GREGORY A.)	Judge Leinenweber
CIERLIK, WILLIAM S. MARKEY, M.D.,)	
MARIA M. MUNOZ, M.D., CHRISTOS A.)	
GALANOPOULOS, M.D., GEORGE I.)	
SALTI, M.D., GEORGE ENGEL, M.D.,)	
HOWARD A. MORITZ, M.D., CHRISTINE)	
BRADY, R.N., ERHARD R. CHORLÉ and)	
LYNN A. ELLENBERGER,)	
)	
Defendants.)	

**DEFENDANTS CHORLÉ AND ELLENBERGER'S MOTION TO
DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendants, Erhard R. Chorlé and Lynn A. Ellenberger (collectively, “defendants”), by their attorneys, Kevin M. Forde, Ltd., respectfully move to dismiss plaintiffs’ complaint pursuant to Fed. R. Civ. P.12(b)(6), and state as follows:

1. Plaintiffs, Vittorio Guerriero and Gregory Nacapoulos, bring this action against Merit Lincoln Park, LLC, owner and operator of Lincoln Park Hospital (“LPH”), several doctors on staff at LPH, the past chief executive officer and the president of LPH, a nurse at LPH and two attorneys (Erhard Chorlé and Lynn Ellenberger) who served as outside counsel for LPH during proceedings regarding the suspension and termination of Guerriero’s privileges. The claims in the Complaint all relate to an alleged fraudulent scheme to revoke Guerriero’s privileges at LPH and thereby allegedly destroy his career and, indirectly, the career of Nacopoulos.

2. Specifically, the Complaint contains eight counts made on behalf of Guerriero: (1) fraud; (2) tortious interference with Bylaws; (3) tortious interference with Guerriero's relationship with LPH and other Chicago hospitals; (4) denial of right to fair trial; (5) civil conspiracy; (6) aiding and abetting by attorneys; (7) violation of RICO; and (8) conspiracy to violate RICO; as well as (9) a ninth count consisting of "Claims of Dr. Nacapoulos."

3. Guerriero's claims against Chorlé and Ellenberger (Counts I-VIII) should be dismissed pursuant to Rule 12(b)(6) because:

- a. *Res judicata* bars his claims
- b. Federal and Illinois statutory immunities bar his claims for damages against Chorlé and Ellenberger relating to their conduct relating to LPH's peer review proceedings;
- c. the litigation privilege bars his state law claims against Chorlé and Ellenberger (Counts I-VI);
- d. Guerriero failed to exhaust his administrative remedies;
- e. Guerriero released his claims; and
- f. Each individual count fails to state a claim.

4. Nacapoulos' claim against Chorlé and Ellenberger (Count IX) should be dismissed pursuant to Rule 12(b)(6) because:

- a. Nacapoulos has no standing to assert claims for damages suffered by Guerriero;
- b. Count IX fails to state a recognizable claim; and

c. Even if Nacapoulos could state a claim based on defendants' alleged misconduct directed toward Guerriero, that claim would suffer from the same infirmities as Guerriero's claims.

5. Accordingly the Complaint should be dismissed in its entirety with prejudice pursuant to Rule 12(b)(6).

6. Contemporaneous with this motion, Chorlé and Ellenberger are submitting a supporting memorandum.

7. In addition, Chorlé and Ellenberger adopt the arguments contained in Defendants Merit Lincoln Park, LLC, Gregory Cierlik, William Markey, Maria Munoz, Christos Galanopoulos, George Salti, George Engel, Howard Moritz and Christine Brady's motion to dismiss pursuant to Rule 12(b)(6) or, alternatively, to strike certain paragraphs of the Complaint under Rule 12(f), and supporting memoranda.

WHEREFORE, for the reasons stated above and in their supporting memorandum, defendants Chorlé and Ellenberger respectfully request that this Court dismiss plaintiffs' Complaint with prejudice pursuant to Rule 12(b)(6).

Respectfully submitted,

/s/Kevin M. Forde

One of the Attorneys for Defendants
Erhard R. Chorlé and Lynn A. Ellenberger

Kevin M. Forde
Kevin R. Malloy
Melissa G. Lafferty
Kevin M. Forde, Ltd.
111 West Washington Street
Suite 1100
Chicago, IL 60602
(312) 641-1441